

[Billing Code 3190-01-M]

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-100a]

**Implementation of WTO Recommendations Concerning the European Communities’
Regime for the Importation, Sale and Distribution of Bananas**

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of proposed determination of action to be taken; request for public comment; notice of public hearing.

SUMMARY: The United States Trade Representative requests written comments and invites testimony in the context of a public hearing on its proposed determination that the imposition of prohibitive (100 percent *ad valorem*) duties on selected products from the European Communities (EC) is an appropriate action under section 306(b) and 301(a) of the Trade Act of 1974, as amended, should the EC fail to implement the recommendations of the World Trade Organization Dispute Settlement Body concerning the EC’s regime for the importation, sale, and distribution of bananas within the prescribed reasonable period of time, which expires on January 1, 1999. The products to be affected by the proposed duty increase will be drawn from the list of products set

forth in the Annex to this notice. The USTR intends to publish a notice on December 15, 1998 describing the actions that it would take, beginning as early as February 1, 1999.

DATES: Requests to testify at the public hearing and written testimony for the public hearing are due by noon on Monday, November 30, 1998; the public hearing will be held on Wednesday, December 9, 1998; written comments, in lieu of written and oral testimony, are due by noon on Thursday, December 10, 1998; and rebuttal briefs, if needed, are due by noon on Friday, December 11, 1998.

ADDRESS: 600 17th Street, NW, Washington, D.C. 20508.

FOR FURTHER INFORMATION CONTACT: Rachel Shub, Associate General Counsel (202) 395-7305; or Ralph Ives, Deputy Assistant U.S. Trade Representative, (202) 395-3320.

SUPPLEMENTARY INFORMATION: January 1, 1999 is the deadline for the European Communities' (EC) implementation of the recommendations of the World Trade Organization (WTO) Dispute Settlement Body (DSB) concerning the EC's regime for the importation, sale, and distribution of bananas (banana regime). On October 22, 1998, the United States Trade Representative (USTR) published a notice [63 Fed. Reg. 56687] of a proposed affirmative determination under section 306(b) of the Trade Act of 1974, as amended (Trade Act) (19 U.S.C. § 2416), that the measures the EC has undertaken to apply as of January 1, 1999 fail to implement the WTO recommendations concerning the EC banana regime. Such a determination will require

the USTR also to determine what further action to take under section 301(a) in the event the EC has failed to implement the WTO recommendations by January 1, 1999.

Permissible actions under section 301(a) of the Trade Act include: action to suspend, withdraw or prevent the application of benefits of trade agreement concessions to the EC; imposition of duties or other import restrictions on goods of the EC or fees or restrictions on services of the EC; and restriction or denial of service sector access authorizations with respect to services of the EC. The USTR proposes that the imposition of prohibitive (100 percent *ad valorem*) duties on selected products from the EC is an appropriate action should the EC fail to implement the WTO recommendations within the prescribed reasonable period of time. The products to be affected by the duty increase will be drawn from the list of products set forth in the Annex to this notice.

The USTR intends to publish a notice on December 15, 1998 describing the actions that it would take beginning February 1, 1999. If the EC requests arbitration under Article 22.6 of the WTO Dispute Settlement Understanding (DSU), the USTR would delay implementation of action until the completion of the arbitration proceedings or until March 3, 1999, whichever is earlier.

The announcement of the USTR's determination on December 15 and the subsequent implementation of action are contingent upon the EC's failure to suspend the implementation of its new banana regime and to implement a regime consistent with the WTO's recommendations. The dates on which the USTR intends to implement action -- February 1 or no later than March 3, 1999 -- correspond to the dates contemplated by sections 306(b) and 305(a) of the Trade Act as

well as Article 22 of the DSU.

Section 306(b) of the Trade Act requires the USTR to determine what further action it shall take under section 301(a) if the USTR considers that a foreign country has failed to implement a recommendation made pursuant to dispute settlement proceedings under the WTO. The USTR shall make this determination no later than thirty days after the expiration of the reasonable period of time provided for such implementation under Article 21.3 of the DSU, which is January 31, 1999 in this case. Section 305(a)(1) requires the USTR to implement such action by no later than thirty days after the date on which that determination is made, or March 2 in this case.

According to Article 22 of the DSU, the United States can request DSB authorization to suspend the application of concessions or other obligations to the EC for its failure to bring a measure into compliance with a covered agreement or the WTO's recommendations within the reasonable period of time. The United States may make its request twenty days after the expiration of the reasonable period of time, or January 21 in this case. Article 22.6 of the DSU provides that the DSB shall grant the requested authorization not later than thirty days after the expiration of the reasonable period, or January 31 in this case. The DSB must decide by consensus to reject the request for authorization. The EC may object to the level of suspension proposed or the application of the principles and procedures specified in Article 22.3 of the DSU in considering the types of concessions or obligations to suspend, in which case the matter shall be referred to arbitration. The DSU requires that arbitration proceedings be completed within sixty days after the expiration of the reasonable period of time, or March 2 in this case. The United States may

not suspend concessions or other obligations during the course of the arbitration proceedings.

Proposed Determination on Appropriate Action

The USTR proposes that the imposition of prohibitive (100 percent *ad valorem*) duties on selected products from the EC is an appropriate action should the EC fail to implement the WTO recommendations within the prescribed reasonable period of time, which expires on January 1, 1999. The products to be affected by the duty increase will be drawn from the list of products set forth in the Annex to this notice. The USTR also has been considering whether appropriate action may include the imposition of fees or restrictions on, or the restriction or denial of authorizations for, EC services and service suppliers. If the USTR intends to determine that any action with respect to services or service suppliers would be practicable and effective, the USTR will publish a further notice seeking comments on such proposed action.

In determining what action to take, the USTR will consider all written comments, testimony, and rebuttal briefs submitted by interested persons to the Section 301 Committee in accordance with the procedures described below.

Public Comment on Proposed Action; Hearing Participation

In accordance with section 304(b) of the Trade Act, the USTR requests all interested persons to provide written comments on the proposed action. Written comments are due by noon on

Thursday, December 10, 1998.

The USTR also invites interested persons to present written and oral testimony and rebuttal briefs in the context of a public hearing to be held pursuant to section 304(b) of the Trade Act. The hearing will be held at 8:00 a.m. on Wednesday, December 9, 1998 in the Main Hearing Room at the U. S. International Trade Commission, 500 E Street, SW, Washington, D.C. 20436.

Testimony at the public hearing should be limited to no more than five minutes.

Written comments and written and oral testimony may address: the appropriateness of imposing increased duties upon the products listed in the Annex to this notice; the levels at which U.S. customs duties should be set for particular items; the degree to which increased duties might have an adverse effect upon U.S. consumers of the products listed in the Annex; and any other matter relating to the appropriate action to be taken under section 306(b) and 301(a). Interested persons submitting written comments do not need to present written and oral testimony as well.

Requests to Testify and Written Testimony: Interested persons wishing to present testimony at the hearing must submit a written request to do so by noon on Monday, November 30, 1998, together with twenty copies of their complete written testimony. Requests to testify must conform to the requirements of 15 CFR § 2006.9 and include the following information: (1) name, address, telephone number, fax number, firm or affiliation of the applicant, and interest of the applicant; and (2) a brief summary of the comments to be presented. After considering the request to present oral testimony, the Chairman of the Section 301 Committee will notify the

applicant of the time of his or her testimony.

Rebuttal Briefs: To assure each party an opportunity to contest the information provided by other parties, the USTR will entertain rebuttal briefs filed by any party by noon on Friday, December 11, 1998. In accordance with 15 CFR § 2006.8(c), rebuttal briefs should be strictly limited to demonstrating errors of fact or analysis not pointed out in written or oral testimony and should be as concise as possible.

Requirements for Submissions: Written comments on the proposed determination, written testimony, and rebuttal briefs must be filed in accordance with the requirements set forth in 15 CFR § 2006.8(b). Comments must state clearly the position taken and describe with particularity the supporting rationale, be in English, and be provided in twenty copies to: Chairman, Section 301 Committee, Attn: EU - Bananas Implementation of WTO Recommendations, Room 100.

Written comments, written testimony, and rebuttal briefs will be placed in a file (Docket 301-100a) open to public inspection pursuant to 15 CFR § 2006.13, except confidential business information exempt from public inspection in accordance with 15 CFR § 2006.15. Persons wishing to submit business confidential information must certify in writing that such information is confidential in accordance with 15 CFR § 2006.15(b), and such information must be clearly marked "BUSINESS CONFIDENTIAL" in a contrasting color ink at the top of each page on each of twenty copies and must be accompanied by a nonconfidential summary of the confidential information. The nonconfidential summary will be placed in the docket that is open to public

inspection.

An appointment to review Docket No. 301-100a may be made by calling Brenda Webb at (202) 395-6186. The USTR Reading Room is open to the public from 9:30 a.m. to 12 noon and 1:00 p.m. to 4:00 p.m., Monday through Friday, and is located in Room 101 of the Office of the United States Trade Representative.

Joanna K. McIntosh

Chairman, Section 301 Committee

Annex

[The bracketed language in this Annex has been included only to clarify the scope of the numbered subheadings of the Harmonized Tariff Schedule of the United States (HTS) which are being considered, and such language is not itself intended to describe articles which are under consideration.]

HTS Subheading	Article Description
	<p>Cheese and curd:</p> <p>[Fresh (unripened or uncured) cheese, including whey cheese, and curd; grated or powdered cheese, of all kinds; processed (process) cheese, not grated or powdered; blue-veined cheese]</p> <p>Other cheese:</p> <p>Other cheeses, and substitutes for cheese,</p>

including mixtures of the above:

Cheeses made from sheep's milk:

0406. 90. 57 Pecorino, in original loaves, not
suitable for grating

Bread, pastry, cakes, biscuits and other bakers'
wares, whether or not containing cocoa; communion
wafers, empty capsules of a kind suitable for
pharmaceutical use, sealing wafers, rice paper and
similar products:

1905. 30. 00 Sweet biscuits; waffles and wafers

Fruit juices (including grape must) and vegetable
juices, not fortified with vitamins or minerals,
unfermented and not containing added spirit, whether
or not containing added sugar or other sweetening
matter:

2009. 70. 00 Apple juice

Wine of fresh grapes, including fortified wines;
grape must other than that of heading 2009:

[Sparkling wine]

Other wine; grape must with fermentation prevented
or arrested by the addition of alcohol:

In containers holding 2 liters or less:

[Effervescent wine]

Other:

Of an alcoholic strength by volume not
over 14 percent vol.:

[If entitled under regulations of the
United States Internal Revenue Service
to a type designation which includes
the name "Tokay" and if so designated
on the approved label]

Other:

Valued not over \$1.05/liter:

2204. 21. 5005

Red

Of an alcoholic strength by volume over
14 percent vol.:

[If entitled under regulations of the
United States Internal Revenue Service

to a type designation which includes
the name "Marsala" and if so
designated on the approved label]

2204. 21. 80

Other

Other:

In containers holding over 2 liters but not
over 4 liters:

2204. 29. 40

Of an alcoholic strength by volume
over 14 percent vol.

In containers holding over 4 liters:

2204. 29. 60

Of an alcoholic strength by volume not
over 14 percent vol.

2204. 29. 80

Of an alcoholic strength by volume
over 14 percent vol.

Pre-shave, shaving or after-shave preparations,
personal deodorants, bath preparations, depilatories
and other perfumery, cosmetic or toilet preparations,
not elsewhere specified or included; prepared room
deodorizers, whether or not perfumed or having

disinfectant properties:

<p>3307.30.50</p>	<p>Perfumed bath salts and other bath preparations: [Bath salts, whether or not perfumed] Other 3406.00.00 Candles, tapers and the like</p>
<p>HTS Subheading</p>	<p>Article Description</p>
<p>3920.10.00</p>	<p>Other plates, sheets, film, foil and strip, of plastics, noncellular and not reinforced, laminated, supported or similarly combined with other materials: Of polymers of ethylene 3920.20.00 Of polymers of propylene</p>

Of polycarbonates, alkyd resins, polyallyl esters
or other polyesters:

3920. 62. 00 Of polyethylene terephthalate

Trunks, suitcases, vanity cases, attache cases,
briefcases, school satchels, spectacle cases,
binocular cases, camera cases, musical instrument
cases, gun cases, holsters and similar containers;
traveling bags, toiletry bags, knapsacks and
backpacks, handbags, shopping bags, wallets, purses,
map cases, cigarette cases, tobacco pouches, tool
bags, sports bags, bottle cases, jewelry boxes,
powder cases, cutlery cases and similar containers,
of leather or of composition leather, of sheeting of
plastics, of textile materials, of vulcanized fiber
or of paperboard, or wholly or mainly covered with
such materials or with paper:

Handbags, whether or not with shoulder strap,
including those without handle:

With outer surface of sheeting of plastic or of
textile materials:

4202. 22. 15 With outer surface of sheeting of plastic
Articles of a kind normally carried in the pocket
or in the handbag:

With outer surface of sheeting of plastic or of
textile materials:

With outer surface of sheeting of plastic:

4202. 32. 10 Of reinforced or laminated plastics

Articles of apparel, clothing accessories and other
articles of furskin:

4303. 10. 00 Articles of apparel and clothing accessories

Wood sawn or chipped lengthwise, sliced or peeled,
whether or not planed, sanded or finger-jointed, of a
thickness exceeding 6 mm:

4407. 10. 00 Coniferous

Other uncoated paper and paperboard, in rolls or
sheets, not further worked or processed than as
specified in note 2 to chapter 48 of the HTS:

4805. 50. 00 Felt paper and paperboard

Paper and paperboard, coated on one or both sides with kaolin (China clay) or other inorganic substances, with or without a binder, and with no other coating, whether or not surface-colored, surface-decorated or printed, in rolls or sheets:

Paper and paperboard of a kind used for writing, printing or other graphic purposes, of which more than 10 percent by weight of the total fiber content consists of fibers obtained by a mechanical process:

[Light-weight coated paper]

4810. 29. 00 Other

Cartons, boxes, cases, bags and other packing containers, of paper, paperboard, cellulose wadding or webs of cellulose fibers; box files, letter trays and similar articles, of paper or paperboard of a kind used in offices, shops or the like:

4819. 20. 00 Folding cartons, boxes and cases, of
noncorrugated paper or paperboard

Printed or illustrated postcards; printed cards
bearing personal greetings, messages or
announcements, whether or not illustrated, with or
without envelopes or trimmings:

[Postcards]

4909. 00. 40 Other

Other printed matter, including printed pictures and
photographs:

[Trade advertising material, commercial catalogs
and the like]

Other:

Pictures, designs and photographs:

Printed not over 20 years at time of
importation:

[Suitable for use in the production of
articles of heading 4901]

Other:

Lithographs on paper or paperboard:

4911. 91. 20 Not over 0.51 mm in thickness

Annex (con.)

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<p>HTS Subheading</p>	<p>Article Description</p>
<p>6110.10.10</p>	<p>Sweaters, pullovers, sweatshirts, waistcoats (vests) and similar articles, knitted or crocheted:</p> <p>Of wool or fine animal hair:</p> <p>Wholly of cashmere</p> <p>Women's or girls' suits, ensembles, suit-type jackets, blazers, dresses, skirts, divided skirts, trousers, bib and brace overalls, breeches and shorts (other than swimwear):</p> <p>Suit-type jackets and blazers:</p> <p>Of wool or fine animal hair:</p> <p>[Containing 30 percent or more by weight of silk or silk waste]</p> <p>6204.31.20 Other</p>

Bed linen, table linen, toilet linen and kitchen
linen:

[Bed linen, knitted or crocheted]

Other bed linen, printed:

Of cotton:

[Containing any embroidery, lace, braid,
edging, trimming, piping or applique work]

Other:

6302. 21. 90 Not napped

Scissors, tailors' shears and similar shears, and
blades and other base metal parts thereof:

Valued over \$1.75/dozen:

[Pinking shears, valued over \$30/dozen]

8213. 00. 90 Other (including parts)

Centrifuges, including centrifugal dryers; filtering
or purifying machinery and apparatus, for liquids or
gases; parts thereof:

Filtering or purifying machinery and apparatus for

liquids:

8421. 21. 00 For filtering or purifying water

Filtering or purifying machinery and apparatus for

gases:

[Intake air filters for internal combustion

engines]

Other:

[Catalytic converters]

8421. 39. 80 Other

Sewing machines, other than book-sewing machines of heading 8440; furniture, bases and covers specially designed for sewing machines; sewing machine needles; parts thereof:

8452. 10. 00 Sewing machines of the household type

Electric storage batteries, including separators therefor, whether or not rectangular (including square); parts thereof:

[Lead-acid storage batteries, of a kind used for starting piston engines]

Other lead-acid storage batteries:

[Of a kind used as the primary source of
electrical power for electrically powered
vehicles of subheading 8703.90]

8507.20.80 Other

Electromechanical domestic appliances, with
self-contained electric motor; parts thereof:

8509.10.00 Vacuum cleaners

8509.40.00 Food grinders, processors and mixers; fruit or
vegetable juice extractors

Electrical lighting or signaling equipment (excluding
articles of heading 8539), windshield wipers,
defrosters and demisters, of a kind used for cycles
or motor vehicles; parts thereof:

Windshield wipers, defrosters and demisters:

8512.40.40 Windshield wipers

Annex (con.)

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<p>HTS Subheading</p>	<p>Article Description</p>
<p>8516.60.40</p>	<p>Electric instantaneous or storage water heaters and immersion heaters; electric space heating apparatus and soil heating apparatus; electrothermic hairdressing apparatus (for example, hair dryers, hair curlers, curling tong heaters) and hand dryers; electric flatirons; other electrothermic appliances of a kind used for domestic purposes; electric heating resistors, other than those of heading 8545; parts thereof:</p> <p>[Microwave ovens]</p> <p>Other ovens; cooking stoves, ranges, cooking plates, boiling rings, grillers and roasters:</p> <p>Cooking stoves, ranges and ovens</p>

Other electrothermic appliances:

8516. 71. 00 Coffee or tea makers

Apparatus and equipment for photographic (including cinematographic) laboratories (including apparatus for the projection or drawing of circuit patterns on sensitized semiconductor materials), not specified or included elsewhere in chapter 90 of the HTS; negatoscopes; projection screens; parts and accessories thereof:

9010. 10. 00 Apparatus and equipment for automatically developing photographic (including cinematographic) film or paper in rolls or for automatically exposing developed film to rolls of photographic paper

Lamps and lighting fittings including searchlights and spotlights and parts thereof, not elsewhere specified or included; illuminated signs, illuminated nameplates and the like, having a permanently fixed light source, and parts thereof not elsewhere

specified or included:

Chandeliers and other electric ceiling or wall
lighting fittings, excluding those of a kind used
for lighting public open spaces or thoroughfares:

[Of base metal]

9405. 10. 80 Other

Dolls representing only human beings and parts and
accessories thereof:

9502. 10. 00 Dolls, whether or not dressed

Other toys; reduced-size ("scale") models and similar
recreational models, working or not; puzzles of all
kinds; parts and accessories thereof:

9503. 10. 00 Electric trains, including tracks, signals and
other accessories thereof; parts thereof

[Reduced-size ("scale") model assembly kits,
whether or not working models, excluding those of
subheading 9503. 10; parts and accessories thereof;
other construction sets and constructional toys,

and parts and accessories thereof; toys
representing animals or non-human creatures (for
example, robots and monsters) and parts and
accessories thereof; toy musical instruments and
apparatus and parts and accessories thereof;
puzzles and parts and accessories thereof; other
toys, put up in sets or outfits, and parts and
accessories thereof; other toys and models,
incorporating a motor, and parts and accessories
thereof]

9503. 90. 00 Other

Festive, carnival or other entertainment articles,
including magic tricks and practical joke articles;
parts and accessories thereof:

Articles for Christmas festivities and parts and
accessories thereof:

Christmas ornaments:

9505. 10. 10 Of glass

Ball point pens; felt tipped and other porous-tipped pens and markers; fountain pens, stylograph pens and other pens; duplicating styli; propelling or sliding pencils (for example, mechanical pencils); pen-holders, pencil-holders and similar holders; parts (including caps and clips) of the foregoing articles, other than those of heading 9609:

9608.10.00 Ball point pens